

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In re Applications of :  
: MM DOCKET NO. 93-75  
TRINITY BROADCASTING OF :  
FLORIDA, INC. : File No. BRCT-911001LY

For Renewal of License of :  
Station WHFT(TV) on :  
Channel 45, Miami, Florida:  
and :

COPY

GLENDAL E BROADCASTING : File No. BPCT-911227KE  
COMPANY :

For a Construction Permit :  
for a New Commercial TV :  
Station to operate on :  
Channel 45, Miami, Florida:

Deposition of: BARRY L. MARCH

Taken by : LEWIS I. COHEN, ESQUIRE

Before : Alfred W. Kershaw, RPR  
Official Court Reporter

Beginning : Friday, September 10, 1993  
10:00 a.m.

Place : Hearing Room 221  
Lancaster County Courthouse  
Lancaster, Pennsylvania

COUNSEL PRESENT:

MULLIN, RHYNE, EMMONS & TOPEL  
1000 Connecticut Avenue Suite 500  
Washington, D.C., 20036  
BY: NATHANIEL F. EMMONS, ESQUIRE

and  
CHRISTOPHER A. HOLT, ESQUIRE  
Appearing for Trinity Broadcasting  
of Florida, Inc.

Federal Communications Commission

*Withdrawn*

Docket No. 93-75 Exhibit No. TBF 202

Presented by Emmons <sup>*Replaced*</sup> TBF/Condale  
*U.S. Court 5*

Disposition { Identified 12.2.93  
Received \_\_\_\_\_  
Rejected \_\_\_\_\_

Reporter A. W. Wainwright

Date 12.2.93

1 COHEN & BERFIELD, P.C.  
2 Board of Trade Building  
3 1129 20th Street N.W.  
4 Washington, D.C. 20036  
5 BY: LEWIS I. COHEN, ESQUIRE  
6 Appearing for Glendale Broadcasting  
7 Company

8 JAMES W. SHOOK, ESQUIRE  
9 Federal Communications Commission  
10 Mass Media Bureau  
11 Washington, D.C. 20554  
12 Appearing for the FCC

13 ALLEN K. KRAUSE, ESQUIRE  
14 424 Chestnut Street  
15 P.O. Box 22  
16 Lebanon, Pennsylvania 17042  
17 Appearing for the Deponent,  
18 Barry L. March

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P R O C E E D I N G S

(Whereupon, at or about 10:00 a.m., the following proceedings transpired:)

(Whereupon, it was stipulated that the original of the deposition would be mailed to Mr. March's attorney for reading and signing by the witness; that the original would then be returned to the Court Reporter for subsequent filing, with two copies, to the FCC.)

BARRY L. MARCH, called as a witness, being duly sworn or affirmed, was examined and testified as follows:

EXAMINATION

BY MR. COHEN:

Q. Would you please identify yourself for the record?

A. All right, my name is Barry L. March, M-A-R-C-H, general manager at the Lebanon Valley Quality Inn, which operates under the name of Greater Hotel Enterprises, Inc.

MR. COHEN: I think, probably, it would be good to have appearances of counsel. My name is

1           A.       I don't.

2           Q.       Do you recall signing an affidavit that  
3 was submitted to the Commission, the Federal  
4 Communications Commission?

5           A.       I remember signing something presented  
6 to me by Mr. Holt, if that's the document in  
7 question, yes.

8           Q.       I see. Okay. What I would like to do  
9 is to make a deposition exhibit two, the affidavit  
10 of Barry L. March with a copying attachment,  
11 Appendix A, Appendix B, Appendix C?

12                   This document is entitled Affidavit of  
13 Barry L. March.

14                   It consists of five pages of text. It  
15 consists of Appendix A, which is a title page, and  
16 Appendix A has attached to it one, two, four pages.

17                   Then Appendix B is a title page, and  
18 that has attached to it three pages.

19                   Appendix C is a title page, and that  
20 has attached to it two pages.

21                   And will you mark this, Mr. Reporter,  
22 as March deposition exhibit two, please?

23                   (Whereupon, the Court Reporter marked  
24 for identification as Deposition Exhibit March two,  
25 an affidavit.)

1           Q.       If I were a caller to the hotel, and I  
2 asked to speak to a manager, who, to your  
3 knowledge, would I be connected with?

4           A.       If you didn't state the purpose, that  
5 it was for reservations or a complaint? If you  
6 would just say I want to talk to a manager; is that  
7 your question?

8           Q.       Yes.

9           A.       You would be transferred over to the  
10 executive office, the administrative office.

11                   My secretary would answer the phone, or  
12 the sales coordinator, who was my secretary prior  
13 to my existing secretary.

14           Q.       Okay, if I placed that call in October  
15 of 1991 to the hotel, and I asked to speak to the  
16 manager, the same would have been true?

17           A.       If it was between the hours of --  
18 working hours of nine to five, Monday through  
19 Friday, yes.

20           Q.       So then prior to speaking with you, the  
21 person would be connected to your secretary?

22           A.       Yes.

23           Q.       How would the caller then be connected  
24 with you? What would the caller have to say to the  
25 secretary, if anything, to be connected with you?

1           A.       Well, she, as you all are aware,  
2 filters the incoming calls. The nuisance calls,  
3 she handles.

4                   The business calls that need my input  
5 are directed to me, sometimes via a written note if  
6 I am at a meeting, and if it's something of great  
7 importance she will contact me and get me out of a  
8 meeting.

9                   Or, you know, if I am free in the  
10 office she will direct a call to me in the office.

11                   But she does always inquire who are  
12 you, what company, and tries to get as much  
13 information as possible.

14           Q.       Did she have any authority to engage in  
15 a conversation with the caller concerning a matter  
16 involving the lease of the hotel's facilities?

17           A.       Very limited, just to gather  
18 information to present to me, to make it easier for  
19 me to call back if I am unavailable.

20           Q.       And that's true, of course, during the  
21 period, October of 1991? I want you to orient your  
22 thinking.

23           A.       This is true of my tenure there in over  
24 eight years.

25           Q.       Do you have any understanding as to how

1 long it takes a call, once it's placed to the  
2 hotel, to be routed to your office?

3 A. You mean after the ringing  
4 discontinues, and it's picked up by the  
5 switchboard?

6 Q. Correct.

7 A. The routing takes seconds.

8 Q. Well, not the actual routing process,  
9 but if I were to call her, I was calling the hotel,  
10 approximately how long would I have to wait before  
11 I actually spoke with you, if you know?

12 A. If I was available or unavailable?

13 Q. If you were available.

14 A. If I was available, oh, probably  
15 anywhere from thirty seconds to like two minutes,  
16 if I would, in fact, talk to you at that time.

17 Q. And what information, if any, would you  
18 require from a caller in order to accept a call?

19 A. I like to get the name, the company,  
20 and the subject matter the person wants to talk  
21 about.

22 And to clarify that, in all cases --  
23 like if an attorney is calling, I don't want her to  
24 get involved in details, so she would just tell me  
25 attorney so and so from firm so and so, and that's



1 it.

2 So if you would call to test this, she  
3 would not quiz you: Why are you calling? She  
4 knows that there are some limitations imposed on  
5 how far you dig.

6 Q. You earlier testified that you reside  
7 in Lancaster. Approximately how far is Lancaster  
8 from the Quality Inn Hotel?

9 A. Well, the city, roughly twenty miles,  
10 approximately twenty miles.

11 My drive is twenty-five miles, to the  
12 mile, one way.

13 Q. And so you commute to work by driving?

14 A. Yes.

15 Q. And how long on the average does it  
16 take you to arrive at work?

17 A. Forty minutes.

18 Q. And what time of the morning do you  
19 typically leave your residence for work? In the  
20 morning?

21 A. Roughly, 9:30, 9:45.

22 Q. Are there any -- I asked you what time  
23 you typically leave in the morning.

24 What, if anything, would cause you to  
25 leave earlier than 9:30, 9:45?

1           A.       Special meetings that were called,  
2       special functions I have to attend. I also go in  
3       later. Some Fridays I go in at 1:00 o'clock in the  
4       afternoon.

5           Q.       As general manager of the hotel and a  
6       member of its board of directors, would you  
7       ordinarily be aware of all lease negotiations  
8       involving the hotel's facilities?

9           A.       What negotiations.

10          Q.       Any sorts of negotiations. Lease  
11       negotiations for the use of the hotel -- Well, put  
12       it in this context; would you ordinarily be aware  
13       of all lease negotiations involving space on the  
14       hotel's roof?

15          A.       Ordinarily, yes.

16          Q.       Would you also be aware of all  
17       discussions between the hotel and others concerning  
18       leases involving the hotel's roof?

19          A.       Yes.

20          Q.       Is that true during the period,  
21       January, 1989 through the present?

22          A.       Yes.

23          Q.       And the same for the preceding  
24       question?

25          A.       Yes.

1           Q.       For the following series of questions I  
2 would like to focus your attention on the period  
3 between July of 1990 to December of 1991.

4                   During that period did you or any other  
5 representative of the hotel enter into lease  
6 negotiations with David Gardner or Raystay  
7 concerning the use of the hotel as a low power  
8 television site?

9           A.       As stated in here, to the best of my  
10 knowledge I have not negotiated, nor signed, any  
11 lease agreements.

12           Q.       Again, focusing your attention to the  
13 period of July, 1990, through December, 1991, did  
14 you or any other representative of the hotel ever  
15 inform David Gardner or Raystay, a representative  
16 of Raystay, that the hotel was still willing to  
17 negotiate an agreement to make the hotel available  
18 for Raystay for use as an LPTV site?

19           A.       To my knowledge I did not recall any  
20 conversation of that nature.

21           Q.       During that same period, did you or any  
22 other representative of the hotel ever generally  
23 discuss possible lease terms with David Gardner or  
24 Raystay for use of the hotel as a LPTV site?

25           A.       To the best of my knowledge, no.

1           Q.       Focusing again on the same time period,  
2       did you or any representative of the hotel ever  
3       engage in preliminary lease negotiations with David  
4       Gardner or Raystay concerning the use of the hotel  
5       as a LPTV site?

6           A.       In your definition, what is a  
7       preliminary agreement?

8           Q.       Well, in the course of -- Have you had  
9       occasion -- Your testimony earlier was that you  
10      have had occasion to negotiate and approve leases  
11      involving the hotel?

12          A.       Yes.

13          Q.       In your understanding of how lease  
14      negotiations occur, have you had occasion during  
15      the periods in question, July, 1990, through  
16      December, 1991, did you or, to your knowledge, any  
17      other representative of the hotel ever engage in  
18      preliminary lease negotiations concerning the  
19      hotel's facilities for use as a LPTV site?

20          A.       The only answer I can give you is there  
21      was a letter of intent signed. I don't know the  
22      date of the letter of intent.

23                    I don't know if it falls into this time  
24      frame you're giving me or not. That's the only  
25      recollection I would have.

1           Q.       So, other than whatever communications  
2 occurred in the context of that letter, you are  
3 unaware of other lease negotiations?

4           A.       That's correct.

5           Q.       Or preliminary lease negotiations?

6           A.       That's correct.

7                   MR. HOLT: I would like to ask the  
8 Court Reporter to mark a document as deposition  
9 exhibit three. It's a four-page document stamped  
10 on the front, duplicate.

11                   And I will give a copy to counsel for  
12 Glendale.

13                   MR. COHEN: Thanks. This is deposition  
14 exhibit three?

15                   MR. HOLT: Exhibit three.

16                   (Whereupon, the Court Reporter marked  
17 for identification as Deposition Exhibit March  
18 three, a letter of December 20, 1991.)

19 BY MR. HOLT:

20           Q.       The document in the left-hand-side  
21 corner has a stamp, 80006, on the first page, and  
22 there are stamps -- sequential numbers through the  
23 next four pages. Again, the bottom left-hand  
24 corner.

25                   If you would turn to page three of the

1 document, which has the date stamped, 80003. If  
2 you would refer to the fourth paragraph.

3 I'm sorry, make that the third  
4 paragraph.

5 MR. SHOOK: Also to clarify something,  
6 I believe the date that you are referring to is  
7 80008.

8 MR. HOLT: I'm sorry, my mistake. My  
9 copy isn't very clear. It's 80008.

10 If you turn to the third paragraph, the  
11 fifth line, it begins with the word, it. It reads:  
12 It has entered into lease negotiations with  
13 representatives of the owners of the antenna site  
14 specified in the applications, although those  
15 negotiations have not been consummated.

16 Again referring to the period, July,  
17 1990, through December, 1991, would you please  
18 state for the record your reaction, if any, to the  
19 sentence I have just read as it relates to the  
20 hotel?

21 A. I have no recall of ever entering any  
22 lease negotiations.

23 Q. Do you consider that statement to be  
24 incorrect?

25 A. The way it's stated, to the best of my

1 knowledge it would stand incorrect, yes.

2 MR. HOLT: I would like to ask the  
3 Court Reporter to mark a document as deposition  
4 exhibit number four. Let the record reflect I'm  
5 handing a copy to -- I'll start with the Court  
6 Reporter, a copy to counsel for Glendale.

7 MR. COHEN: Is it four?

8 MR. HOLT: Yes. A copy to counsel for  
9 the witness and a copy to the witness.

10 (Whereupon, the Court Reporter marked  
11 for identification as Deposition Exhibit March  
12 four, a document.)

13 BY MR. HOLT:

14 Q. This is a three-page document. At the  
15 top it's identified as a declaration. And on the  
16 third page it's dated June 3rd, 1993, and there is  
17 a signature which states it was signed by the  
18 person called David A. Gardner.

19 If I can refer your attention to the  
20 third page of the declaration -- I'm sorry, the  
21 second page of the declaration.

22 Please forgive me, look at the first  
23 page of the declaration.

24 The fourth paragraph beginning with the  
25 words: In the early fall.

1                   If you read down five lines, beginning  
2 with the sentence: I called; would you please  
3 read: I called Ready Mixed Concrete Company, the  
4 owner of the Lancaster site, and the Quality Inn,  
5 the owner of the Lebanon site.

6                   I was informed by representatives of  
7 both companies that they were still willing to  
8 negotiate an agreement to make their respective  
9 properties available as sites for LPTV stations.

10                  I generally discussed possible lease  
11 terms with both individuals.

12                  Focusing your attention to the first  
13 sentence of that phrase I just read, would you  
14 please state your reaction for the record, if any,  
15 as to whether you received -- Do you recall  
16 receiving a call from a representative of Raystay?

17                  A.       Number one, I'm not the owner of the  
18 Lebanon site.

19                  Q.       As general manager of the Quality Inn,  
20 do you recall receiving any call from David A.  
21 Gardner?

22                  A.       In 1991, as I have stated numerous  
23 times before this afternoon -- or morning -- No, I  
24 have no recall.

25                  Q.       Do you recall ever being informed by



1 David Gardner that -- I'm sorry, do you ever recall --  
2 Focusing your attention on the sentence, I was  
3 informed by -- Please forgive me.

4 MR. COHEN: Don't worry about it,  
5 Chris. It happens to everybody. Don't let it  
6 bother you.

7 BY MR. HOLT:

8 Q. Focusing your attention to the second  
9 phrase of that, which states: I was informed by  
10 representatives of both companies that they were  
11 still willing to negotiate an agreement to make  
12 their respective properties available as sites for  
13 LPTV stations; would you please state for the  
14 record your recollection, if any, to the accuracy  
15 of that statement?

16 A. I absolutely -- I have no recall as to  
17 this type of conversation.

18 Q. Would you focus on the final sentence  
19 of what I have just read, which begins: I  
20 generally discussed possible lease terms with both  
21 individuals?

22 And please state your reaction, if any,  
23 for the record as to the accuracy of that  
24 statement?

25 A. I have no recall of making that

1 comment.

2 Q. No, I'm sorry, this is a statement that  
3 was made by David A. Gardner. Would you state your  
4 reaction to the statement as to whether it's  
5 accurate or not?

6 A. I have no lease terms. I have no  
7 lease. I did not negotiate an agreement. I don't  
8 know what else you want me to say. I'm missing the  
9 question.

10 Q. Well, a statement was made by David  
11 Gardner as indicated by the fact that this is a  
12 declaration in which he stated: I generally  
13 discussed possible lease terms with both  
14 individuals.

15 And I am asking for your reaction as to  
16 the accuracy of that statement.

17 A. The statement is taken out of the  
18 context of time. Okay, I have told everyone in  
19 this room, the initial contact with me, whether by  
20 phone or in person, I told them we would be  
21 interested in the possible negotiation of placing  
22 some kind of antenna, satellite dish, etc., on the  
23 roof of the Lebanon Valley Quality Inn.

24 However, they had to test it, check it,  
25 make sure it would hold the weight -- this, that,

1 the height.

2 My recall is that I signed a letter of  
3 intent. Nothing was ever discussed by me.

4 My recall is that nothing was ever  
5 discussed by me concerning the specifics of any  
6 type of future agreement.

7 Furthermore, without having  
8 specifications in front of me, how could I go into  
9 negotiations as far as trying to finalize these  
10 arrangements?

11 Does that answer the question?

12 Q. I think it does. I just have a couple  
13 more questions for you.

14 Going back to the initial contact that  
15 you spoke about that occurred in 1989, do you  
16 recall at the time of that contact whether there  
17 was another antenna on the roof of the hotel?

18 A. Yes.

19 Q. And what was the size of that other  
20 antenna, if you recall?

21 A. My recollection is it's still there.  
22 It's a small whip antenna.

23 Q. Did you discuss with the person that  
24 you spoke with back in 1989 whether the structure  
25 that he was proposing to put on the roof would be

1 comparable in size to the antenna that was on your  
2 roof at that time?

3 A. I discussed -- I remember discussing  
4 the possible interference in reception of that  
5 antenna.

6 We didn't get into -- I don't recall  
7 getting into the exact height in relation to that  
8 antenna.

9 But I remember I was left with the  
10 impression that it would be something that would  
11 not -- Unobtrusive. It would not be aesthetically  
12 degrading to the property. I made that very well  
13 known.

14 And, as I stated to you, when I got a  
15 copy of the antenna as presented to me, I almost  
16 fell over.

17 That was not the description I was  
18 given during the initial contact.

19 Q. Do you recall whether you discussed  
20 with the person you spoke with whether the proposed  
21 antenna would pose any radiation hazard?

22 A. I don't recall discussing radiation. I  
23 was just concerned about disrupting the reception  
24 of the existing antenna.

25 Plus I want to add at this point, and I

1 think I said it earlier -- perhaps I didn't: Any  
2 final negotiations of this magnitude, our attorney  
3 would have been brought in, as he will validate.

4 Contracts of this caliber would be run  
5 through the attorney to draw it up from A to Z.

6 It would have to be, first of all,  
7 presented to the board of directors and okayed by  
8 the board of directors.

9 As I stated at this meeting: Did I  
10 ever bring this up to the board? The answer is:  
11 No.

12 It was too tentative. I didn't have  
13 sufficient information. I didn't have diagrams,  
14 schematics, nothing.

15 So it was so tentative that I thought  
16 this thing went south. I thought it was done. I'm  
17 shocked this is still alive.

18 Meaning I thought it died as a project.

19 Q. At any time after the initial contact  
20 with the individual you spoke with in 1989, were  
21 you ever provided with a written copy of this  
22 sketch that you have referred to earlier?

23 A. No.

24 Q. At any time after that visit, that  
25 contact, were you ever provided with an oral

1 description of the structure depicted in the  
2 sketch?

3 A. To the best of my knowledge, no.  
4 Definitely not.

5 Q. At any time after the contact, were you  
6 ever provided with any information about the size  
7 or weight of the structure depicted in the sketch?

8 A. No, not to my knowledge.

9 Again, I make the statement, when I saw  
10 the sketch you presented to me, I went into shock.

11 Had I known previous to the literature  
12 you sent me in the mail about the height, weight,  
13 size, or anything related to the nature of this  
14 particular antenna, why would I have gone into  
15 shock?

16 Q. Well, you have referred earlier to the  
17 letter of intent.

18 In light of what you have seen in the  
19 antenna sketch, would you have signed the letter of  
20 intent that you referred to?

21 A. No.

22 Q. Who, to your knowledge, during the  
23 period, July, 1990, through December, 1991, had any  
24 information about your previous contact with the  
25 individual who called you about the LPTV site?

1           A.       Don Yordy and my administrative  
2           assistant at that time, who I don't know who -- I  
3           would have to look in the personnel records. I  
4           don't know who that was.

5           Q.       The administrative assistant?

6           A.       My secretary.

7           Q.       But focusing on the period, July, 1990  
8           through December, 1991, do you recall whether you  
9           had the same administrative assistant that you had  
10          in 1989?

11          A.       I don't recall that.

12          Q.       You don't recall if there is -- When  
13          you were initially contacted about the LPTV site in  
14          1989, you had an administrative assistant, correct?

15          A.       I have had one ever since I have been  
16          there, yes.

17          Q.       And you don't recall whether that was  
18          the same person who was there?

19          A.       (Indicates no.)

20          Q.       If anyone else at the hotel, any of  
21          your department heads had received a call on the  
22          matter involving LPTV stations and possible use of  
23          the hotel as a site, what, if anything -- Let me  
24          rephrase.

25                 Does the hotel have any policy about

1       referring matters to you that -- If one of your  
2       department heads receives a call or communication  
3       of any sort regarding a matter with which they are  
4       unfamiliar, what, if anything, is the hotel's  
5       policy as to how that individual should handle that  
6       contact?

7           A.       Simple: They refer it to the manager.

8           Q.       And the manager is --

9           A.       Barry L. March.

10          Q.       And those are standard instructions?

11          A.       Yes.

12          Q.       I want to apply that question, the same  
13       question, to the officer of the Quality Inn who  
14       maintains offices at the hotel.

15                 If any of those individuals had  
16       received a call concerning a matter involving LPTV  
17       facilities --

18          A.       Let me make that easy for you. There  
19       was a retirement of one of our officers who worked  
20       out of her home entirely.

21                 The new person that took it over moved  
22       the file cabinets into this -- I described where on  
23       the hotel property. I think he was there one day  
24       or maybe several hours at a desk, and from that  
25       time period he has been working out of his home.



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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that I was present  
upon the hearing of the above-entitled matter and  
there reported stenographically the proceedings  
had and the testimony produced; and I further  
certify that the foregoing is a true and correct  
transcript of my said stenographic notes.

Alfred W. Kershaw

ALFRED W. KERSHAW, RPR

Official Court Reporter